IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 15 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IQBAL MOHMADSHARIF BALOTARAWALA

Versus

STATE OF GUJARAT

Appearance:

MR AM PAREKH for Petitioner

MR ST MEHTA APP for Respondent No. 1

MR PRADYUMAN B BHATT for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/09/2000

ORAL JUDGEMENT

This revision application under Section 397 CrPC has been preferred by the Opponent in Criminal Misc.

Application No. 62 of 1992. The Opponents herein are the State and the former wife of the applicant. The opponent no. 2 preferred above referred Criminal Revision Application No. 62 of 1992 under Sec. 125 CrPC before the learned Metropolitan Magistrate, Ahmedabad. The applicant claimed that she was married to opponent [the present Applicant] and during the said wedlock, a baby girl called Reshma was born to her. The Opponent neglected to maintain either the applicant or the child. She claimed that the opponent was dealing in colours and dyes and was earning Rs. 15,000/= a month. She, therefore, claimed a monthly maintenance of Rs. 500/= for herself and Rs. 400/= for minor daughter. The application was tried. It was found that after marriage, the opponent divorced the applicant and had contracted another marriage. The opponent's liability to maintain the applicant wife and the minor daughter was thus established. However, the income of the opponent was not proved. In absence of any specific proof, the learned Metropolitan Magistrate, Court No. 12 under his judgment and order dated 9th May, 1995 awarded a monthly maintenance of Rs. 200/= to the applicant and of Rs. 100/= to the minor daughter. Feeling aggrieved, the applicant preferred Criminal Revision Application No. 44 of 1995. The learned Addl. City Sessions Judge, Ahmedabad, Court no. 14 by his judgment and order dated 16th October, 1995 allowed the said Revision and enhanced monthly maintenance to Rs. 400/= to the applicant wife and Rs. 250/= to the minor daughter. Feeling aggrieved, the opponent has preferred the present Revision.

The liability of the petitioner to maintain his divorced wife and the minor daughter is not in dispute. The only question is whether the learned Addl. City Sessions Judge ought to have enhanced the amount of maintenance awarded to the applicant wife and the minor daughter. It is indisputable that the applicant wife has not been able to establish the income of the petitioner nor the petitioner has led any evidence except his oral evidence to establish the extent of his income. In absence of any proof of income, the learned Judge has presumed that the petitioner ought to be earning around Rs. 1200/= every month. On the basis of such presumption, the amount of maintenance has been determined.

The source of income and the extent of the income of the opponent is a matter within the knowledge of the opponent alone. The applicant wife who had been estranged from the opponent husband for a long time could not have knowledge about the source of his income or the

amount of such income. The matter which was within the personal knowledge of the opponent ought to have been proved by him. Since the opponent has failed to lead evidence in this behalf, the learned Judge, in my view, has rightly deduced that the monthly income of the opponent was around Rs. 1200/=. Besides, there is nothing on the record that the opponent has any other liability. In absence of such evidence, the learned Judge was right in awarding the monthly maintenance of Rs. 650/= to the divorced wife and the minor daughter.

In view of the above discussion, no interference is warranted. Revision application is dismissed. Interim relief is vacated. Rule is discharged. The petitioner will pay all the arrears of maintenance due and payable under the impugned order dated 16th October, 1995, latest by 1st January, 2001.

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Prakash*